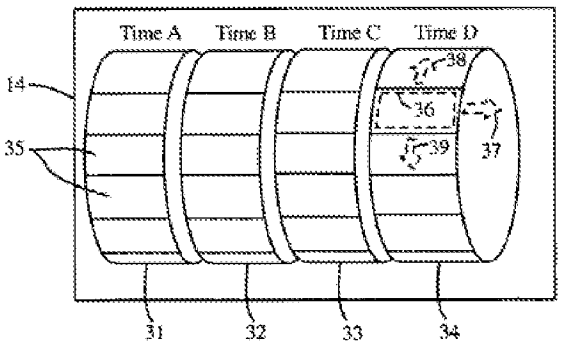
REMARKS

In the Office Action mailed June 4, 2010, as entered in the above-captioned matter, Claims 1-7 and 9-12 were rejected under 35 U.S.C. §103(a) as being unpatentable over Nakamura et al. (U.S. Patent Publication No. 2003/0167466) ("Nakamura") in view of Ohkura et al. (U.S. Patent No. 6,005,601) ("Ohkura") and Anwar (U.S. Patent No. 5,767,854)("Anwar"). Claims 8 and 13 were rejected under 35 U.S.C. §103(a) as being unpatentable over Nakamura in view of Ohkura and Anwar and further in view of Sai et al. (U.S. Patent No. 6,822,661)("Sai"). The Applicants respectfully traverse these rejections and request reconsideration.

Rejections under 35 U.S.C. §103(a)

Claims 1-7 and 9-12 were rejected under 35 U.S.C. §103(a) as being unpatentable over Nakamura in view of Ohkura and Anwar.

As explained in earlier papers, the Applicants' claims specify providing a program guide with a browsing and selection interface depicted as a plurality of three dimensional objects. Each object corresponds to a different time. Each object displays a plurality of characterizing descriptors (for example, program descriptions) corresponding to the time corresponding to that object. Each object may be scrolled independently of the other objects. An embodiment of Applicants' program guide is shown in Applicants' FIG. 3 (reproduced below) in which the Applicants provide for a plurality of three dimensional cylinders (31-34) where the horizontal axis corresponds to the temporal domain and where each of the cylinders corresponds to a different time (Times A-D). The user may browse and select among the characterizing descriptors by scrolling each of the three dimensional objects independently of the other three dimensional objects.



For example, to cause object 34 to scroll, the user may move area of focus 36 upward or downward. This will cause object 34 to scroll independently of objects 31-33. Then, to cause

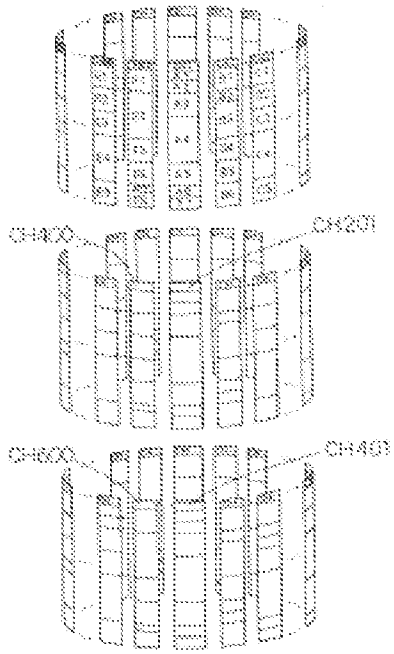
another object to scroll, the user may move area of focus 36 from object 34 to another object, *e.g.*, object 33, and initiate scrolling of that object independently of the other objects. This provides the user with the flexibility to simultaneously view programming options for different channels at different times. For example, the user may view programming options for one channel for Time A, and at the same time view programming options for different channels for Times B, C and D.

In support of the rejection, the Examiner suggests modifications to Nakamura and Ohkura that are extreme and hardly obvious. The suggested modification to Nakamura renders the invention set forth therein unsatisfactory for its intended purpose, and the suggested modification to Ohkura changes its principles of operation. Moreover, the proposed combination of Nakamura, Ohkura, and Anwar introduces problems that one of ordinary skill in the art would be unable to solve merely given the teachings of the cited references. In sum, no fair combination of Nakamura, Ohkura, and Anwar that does not rely upon the hindsight application of Applicants' own teachings and that does not require extreme modifications that are above and beyond mere design choice will yield the recitations of Applicants' claims. These points are discussed in more detail below.

Claims 1 and 9

In making this rejection, the Examiner relies upon Nakamura's presentation of a three dimensional cylindrical display and more particularly upon Nakamura disclosing "multiple 3-

dimensional cylindrical displays displaying program guide information, wherein the axis of the cylinders are vertical."[1] While Nakamura does disclose (in his FIG. 15, shown at the right) a multiple-vertical-cylinder embodiment, it is noted that each cylinder presents, for each of a plurality of channels, programming content information for a plurality of different times.



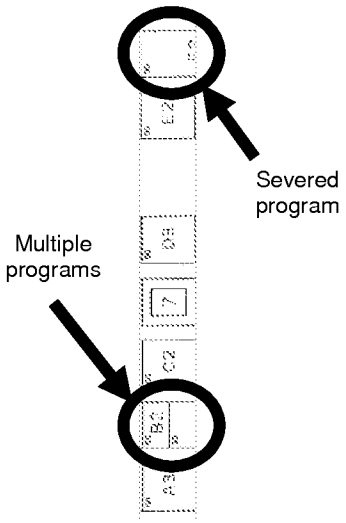
As acknowledged by the Examiner, this is different from the Applicants' claimed approach. For example, Applicants' claims 1 and 9 specify that each three dimensional object "corresponds to a different time." Nakamura, on the other hand, teaches that each cylinder presents programming for a plurality of times. Applicants' claims 1 and 9 also specify that "each of the plurality of three dimensional objects may be scrolled independently of the characterizing descriptors displayed on the other three dimensional objects." Nakamura, however, does not disclose that the cylinders in FIG. 15, or in any embodiment for that matter, are independently scrollable.

To meet these deficiencies, the Examiner relies upon the combination of Nakamura, Ohkura, and Anwar. Specifically, the Examiner contends that combining Nakamura with Ohkura, which the Examiner notes "suggests an electronic program guide can be composed of several cylinders with horizontal axes (Figs. 3-13 and 18, col. 2, ln. 12- col. 15, ln. 50, specifically col. 5, ln. 26 – col. 6, ln. 28), one of ordinary skill in the art at the time of the invention would have found it obvious to modify the vertical cylinders of Nakamura by turning them on their sides so as to be displayed as horizontal cylinders. . . . From this point it would have been obvious . . . to modify Nakamura to allow for different time periods to be designated [on] a separate cylinder."[2] The Examiner then suggests that "any problems arising from such a transition, such as the need to reformat the words and letters of the various cells that make up

1 Office Communication of June 4, 2010 at page 3, lines 8-9.
2 Id. at page 3, line 22 – page 4, line 12.

Nakamura's cylinders, could have been solved by one of ordinary skill in the art at the time of the invention using Ohkura's teaching from at least Figure 18."[3]

With all due respect, the Applicants observe and submit that making such extreme modifications of Nakamura and Ohkura, with or without the influence of Anwar, is hardly obvious. As Applicants have explained in previous papers, one does not achieve a usable result by merely modifying Nakamura as suggested by the Examiner. In the modified view of Nakamura's FIG. 2 shown at the right to accord with such a change, one immediately discovers corresponding resulting problems that would "render [Nakamura] being modified unsatisfactory for its intended purpose."[4] The intended purpose of Nakamura is to provide a display that provides users with an electronic program guide in which the program data for multiple channels may be easier seen than in conventional guides. However, the modification the Examiner proposes defeats this purpose. For example, while some of the program data fits within the one time being displayed, a program with a longer duration (at the top) is severed while another channel hosts one complete program (or possibly shows only the conclusion of a first program, which in any event is ambiguous at best) and the beginning of another program (near the bottom). Such problems do not lend themselves to providing a guide that is easier to view and comprehend, which is the stated purpose of Nakamura. Rather, we respectfully submit that such problems would tend to discourage a skilled person from pursuing this modification of Nakamura at all. *See* MPEP § 2140.01 V in these regards.



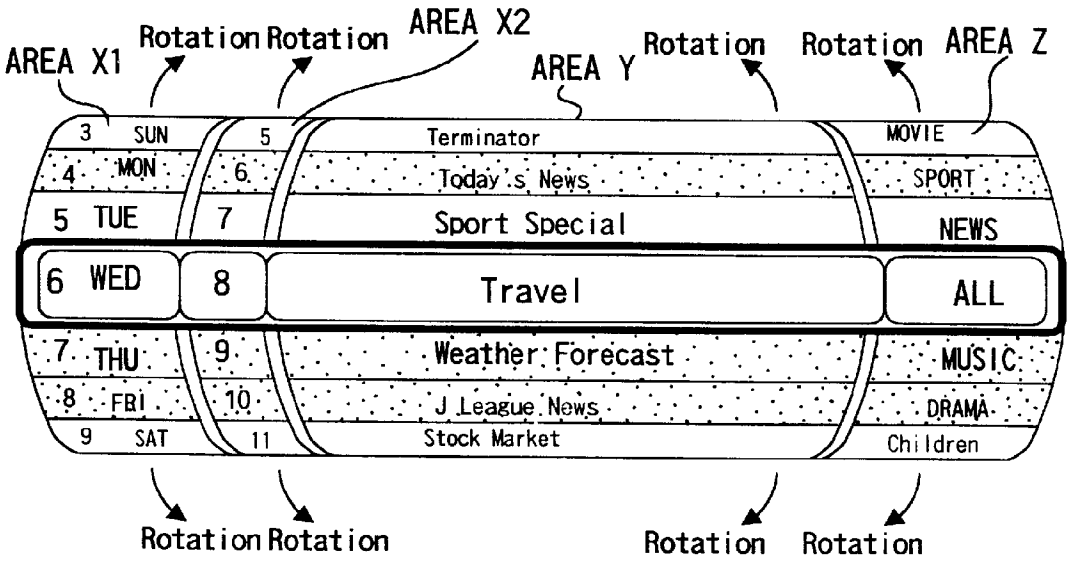
Moreover, these problems that would be created by the proposed modification to Nakamura are not problems that are solved by merely "reformat[ing] the words and letters of the various cells that make up Nakamura's cylinders" as the Examiner suggests, nor has the Examiner offered any contrary illustrative examples as to how merely reformatting words and

3 Id. at page 4, lines 7-7.

letters will ameliorate such serious deficiencies.[5] In fact, there is nothing in Nakamura, Ohkura, or Anwar that would suggest how one might handle such problems and their corresponding ambiguity. As a result, it is inappropriate to view such a significant alteration of Nakamura as being merely an obvious modification. This difficulty presents new challenges that would require being solved and hence disqualifies this approach as being a "mere design choice."

In addition to the problems associated with the Examiner's proposed modification of Nakamura, Applicants' claims also provide for being able to independently scroll through the information on a single three dimensional object, hence leaving the other three dimensional objects as they were. The Examiner acknowledges that "[a]lthough Ohkura's figure 18 shows arrows indicating that each separate area can be rotated, neither Nakamura nor Ohkura explicitly disclose responding to user input by scrolling . . . wherein the characterizing descriptors displayed on each of the plurality of three dimensional objects may be scrolled independently of the characterizing descriptors on the other three dimensional objects." The Examiner suggests that Anwar can be used to supplant this claimed recitation, with particular reliance being based upon Anwar's Fig. 1 and col. 6, ln. 57 – col. 7, ln. 4.

Ohkura's FIG. 18 is reproduced below for the convenience of the Examiner and



b

4 MPEP § 2140.01 V.
5 Office Action Communication of June 4, 2010 at page 4, lines 5-6.

can be described as a program list that Ohkura refers to as a "cylinder EPG." Ohkura's cylinder EPG is divided into areas X1, X2, Y, and Z, corresponding to the date, time, program information, and genre, respectively. Ohkura teaches that a user can move a cursor to cause any one of these areas to scroll. However, Ohkura *further* teaches that as the selected area is scrolled, information in the other areas can *change accordingly*. By definition, Ohkura's scrollable areas are *not* independent of one another but rather are *interdependent*. FIGS. 11A and 11B of Ohkura show this concept. For example, as the user moves the curser in AREA Y from "Today's News" to "Thriller," the time displayed in AREA X2 changes from "8" to "9" because Thriller is a program that begins at 9:00. Therefore, even if Ohkura is viewed as teaching separate three dimensional objects, the three dimensional objects are *not* independently scrollable because scrolling one object causes the information shown on the other object(s) to change.

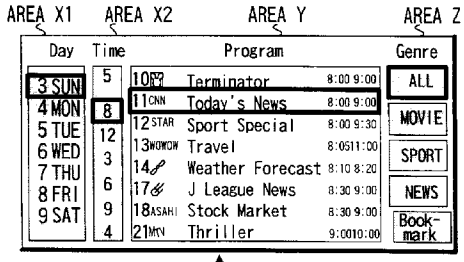


FIG. 11A

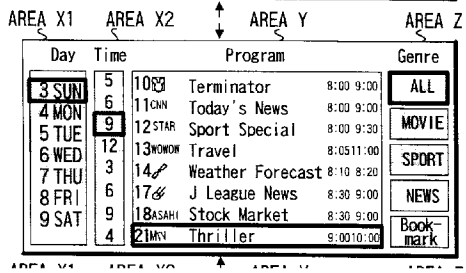


FIG. 11B

Furthermore, Applicants respectfully observe that Ohkura's teachings would actually motivate a person skilled in the art *away* from *independently* scrollable three dimensional objects when displaying available programming results, regardless of the teachings of Anwar. This is because Ohkura teaches interdependence between scrollable areas such that as the user modifies information in one area, the information in other areas is updated accordingly. Because the Examiner's proposed modification of Ohkura to provide for independent scrolling would "change the principle of operation of the prior art invention being modified," the teachings of Ohkura and Anwar are not sufficient to render the claim obvious.[6]

Accordingly, and with all due respect, Applicants submit that no combination of Nakamura, Ohkura, and Anwar, and certainly no fair combination that does not rely upon the

6 MPEP § 2140.01 VI.

hindsight application of Applicants' own teachings, will yield the recitations of independent claims 1 and 9. Accordingly, Applicants respectfully submit that claims 1 and 9 are allowable over the references of record.

Dependent claims 2-8 and 10-13

These remaining claims are ultimately dependent upon one of the independent claims shown above to be allowable. While the Applicants believe that other arguments are available to highlight the allowable subject matter presented in various ones of these dependent claims, the Applicants also believe that the comments set forth herein regarding allowability of the independent claims are sufficiently compelling to warrant present exclusion of such additional points for the sake of brevity and expedited consideration.

Conclusion

There being no other objections to or rejections of the claims, the Applicants respectfully submit that claims 1-13 may be passed to allowance. If the Examiner should have any other points of concern, the Examiner is expressly invited to contact the undersigned by telephone to discuss those concerns and to seek an amicable resolution.

Respectfully submitted,

FITCH, EVEN, TABIN & FLANNERY

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